

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 13, 2004

IN RE:

**SHOW CAUSE PROCEEDING AGAINST
EZ TALK COMMUNICATIONS, LLC FOR
VIOLATIONS OF TENN. CODE ANN. § 65-4-125
AND TENN. RULES & REGS. 1220-4-2-.56**

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**DOCKET NO.
03-00632**

**ORDER GRANTING EZ TALK'S MOTION
TO DEFER CONSIDERATION OF ITS APPEAL**

This matter came before Director Pat Miller, Director Sara Kyle, and Director Ron Jones, the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on February 9, 2004 for consideration of the *Appeal of EZ Talk Communications, L.L.C. of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* ("Appeal") and EZ Talk's request to defer consideration of the *Appeal* filed with the Authority on February 6, 2004

I. BACKGROUND

The *Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* ("Initial Order") was issued on January 12, 2004. The *Initial Order* found EZ Talk in violation of Tenn. Comp. Rules & Regs. 1220-4-2-.56 and Tenn. Code Ann. § 65-4-125 with regard to twenty-one (21) allegations of slamming.¹ The *Initial Order* also found that EZ Talk had failed to come forward and present evidence to contradict these allegations as required by the Hearing Officer's *Order Requiring EZ Talk Communications, LLC to Appear and Show Cause Why an*

¹ Slamming is a colloquialism to denote the unauthorized changing of a consumer's long distance service provider without the consumer's written or oral authorization.

Order Revoking Its Reseller Certificate and/or Imposing a Fine Should Not Issue (“*Show Cause Order*”) issued on December 18, 2003. The *Initial Order* revoked EZ Talk’s certification as a reseller of telecommunications services and imposed a monetary sanction of one million six hundred seventy-seven thousand dollars (\$1,677,000.00). Pursuant to the requirements of the Uniform Administrative Procedures Act the *Initial Order* provided a period of fifteen (15) days for the parties to seek review of the *Initial Order* and stated that after the fifteen-day period, the *Initial Order* would become a final order of the Authority

EZ Talk’s *Appeal* was sent to the Authority via facsimile after the close of business on January 27, 2004. The facsimile copy was filed with Authority through the Docket Room on the morning of January 28, 2004. The CSD filed its *Response of Consumer Services and External Affairs Division to Appeal of EZ Talk Communications, L L C of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* (“*Response*”) on February 4, 2004. In its *Response* the CSD stated its position that the *Appeal* was not timely filed in conformance with Tenn Code Ann § 4-5-315(b) and Authority Rules 1220-1-1-.11(1) and 1220-1-1-.03(7) and that, because the *Appeal* was not timely filed, the *Initial Order* became a final order of the Authority and thereby extinguished EZ Talk’s right to appeal the Hearing Officer’s *Initial Order* for consideration by the Authority²

EZ Talk’s *Appeal* was placed on the agenda for the February 9, 2004 Conference and a copy of the agenda was forwarded by U.S. Mail and facsimile to EZ Talk on January 29, 2004. EZ Talk’s request to defer consideration of the *Appeal* was received by the Authority via facsimile from EZ Talk on February 6, 2004.

During the February 9, 2004 Authority Conference Mr. Ashish Patel appeared via telephone and identified himself as Chief Regulatory Officer for EZ Talk. Ms. Jean Stone, Esq., appeared

² *Response*, p. 8 (February 4, 2004)

for the Consumer Services and External Affairs Division ("CSD") Mr Patel repeated EZ Talk's request that the Authority defer consideration of the *Appeal* until the next regularly scheduled Authority Conference which is set for February 23, 2004. Mr Patel stated that EZ Talk was in the process of securing local counsel to represent its interests and that the Authority should not proceed with the consideration of the *Appeal* without affording EZ Talk additional time to secure local counsel. Ms. Stone responded on behalf of the CSD stating that EZ Talk has had ample opportunity to secure local counsel and that the *Appeal* was not filed in conformance with state law and Authority rules.

II. FINDINGS

The panel considered EZ Talk's request for a deferment and discussed with Mr Patel the efforts on the part of EZ Talk to retain local counsel Mr Patel was reminded that EZ Talk has had an appreciable amount of time to retain local counsel since first receiving notice of the show cause proceeding. The panel determined that it should examine the issue of whether the *Appeal* was timely filed as a threshold issue before considering the *Appeal*

At the close of the proceedings the panel voted unanimously to allow EZ Talk to cause a notice of appearance to be filed by their attorney by 2 00 p m , Friday, February 13, 2004 The panel also voted unanimously to allow EZ Talk until 2 00 p.m , Friday, February 20, 2004 to file a reply to the CSD's *Response* regarding the issue of whether the *Appeal* was timely filed.


IT IS THEREFORE ORDERED:

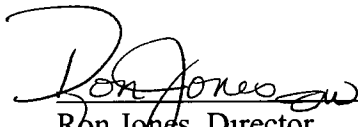
1. EZ Talk Communications, L L C shall have until **2:00 p.m., Friday, February 13, 2004** to cause to be filed with the Authority a Notice of Appearance by an attorney representing EZ Talk in this docket.

2. If a Notice of Appearance is timely and properly filed with the Authority, EZ Talk Communications, L L C. shall have until **2:00 p.m., Friday, February 20, 2004** to file a reply to the *Response of Consumer Services and External Affairs Division to Appeal of EZ Talk Communications, L L C. of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* regarding the issue of whether the *Appeal of EZ Talk Communications, L L C of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* was timely filed.

3. If a Notice of Appearance is not filed by **2:00 p.m. on Friday, February 13, 2004**, the *Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* entered on January 12, 2004 shall be deemed a Final Order of the Authority and shall be considered effective January 12, 2004, the date of entry.


Pat Miller, Director


Sara Kyle, Director


Ron Jones, Director